IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
APPEAL FROM ORDER NO.783 OF 2005

M/s.Amber Enterprises Appellant

Vs.

Smt.Pushpa Dwarkadas Rupareilia & anr. Respondents

Mr.V.A.Thorat with Mr.K.N.Thakore i/b. M/s. Kishore Thakordas & Co. for appellant.

Mr. P. K. Dhakephalkar with Mr.C. K. Tripathi for respondent no.1.

Mr.G.D.Uttangale for Resp.No.2.

CORAM: B.H.MARLAPALLE,J.
August 05, 2005.

ORAL ORDER:

1. Heard Mr.Thorat, the larned senior counsel i/b. M/s.Koshore Thakordas & Co. for the appellant and Mr.Dhakephalkar, the learned counsel for the respondent no.1 and Mr.Uttangale appears fro respondent no.2. The appellant is defendant no.2 and respondent no.2 is defendant no.1 in S.C. Suit No.6125 of 2004 instituted by the present respondent no.1. Notice of Motion No.2541 of 2005 was taken out in the said suit and by way of ad-interim relief the learned Judge of the City Civil Court, Greater Mumbai passed an order of status quo on 30-6-2005 and the said order is the subject matter of challenge in this appeal. The appeal can, therefore, be disposed off

at the admission stage itself so that the Notice of Motion pending could be decided within a fixed time schedule.

2. Admittedly the plaintiff was a lessee on the suit land which has been declared as a slum by the Competent Authority viz. Defendant No.1 on 22nd November 1988. The plaintiff had filed an appeal against the said order of declaration of slum and the appeal has been dismissed on 10-2-2005. In Notice of Motion No.5421 of 2004 there was an order of ad-interim relief granted in favour of the plaintiff and the said order was modified by this Court in A.O. No.1 of 2005 vide order dated 5-1-2005. The Notice of Motion No.5421 of 2004 came to be dismissed by the trial Court on 9-3-2005 and challenge to the said order raised in A.O. No.481 of 2005 failed before this Court as per the order dated 25-4-2005. However, it was clarified that the plaintiff would not be prevented from making an appropriate application for amendment of the plaint and thereafter taking out an appropriate application for interim relief. Accordingly the amendment application was taken out in Draft Chamber Summons No.741 of 2005. The amendment has been allowed and

at the same time the impugned ad-interim order has been passed. In the mean while the appellant has completed the rehabilitation building in which the slum dwellers have already been moved. The remaining portion of the suit property which was occupied by the slums has been, therefore, cleared and the appellant proposes to construct a multi-storeyed building as per the plans sanctioned by Defendant No.1 on 26th April 2004 which has subsequently issued the commencement certificate on 13th May 2004. The 1st defendant is also the special planning authority within the meaning of the MRTP Act, 1966. As per the appellant the ad-interim order has been passed when the excavation for construction of the second multi-storeyed building was just commenced.

3. Taking into consideration the present circumstances and the fact that the slum dwellers have already been rehabilitated and the plaintiff has amended the suit, this appeal is disposed off in terms of the following order:

(a) The defendants to file their written statement / reply latest by 31st August 2005 before the trial Court and the Notice of Motion No.2541 of 2005 shall

be heard and decided on its own merits as expeditiously as possible and in any case by 31st October 2005. All the parties shall cooperate with the trial Court for disposal of the Notice of Motion within the said period.

(b). The excavation, filling-in and levelling and construction of plinth may be taken up by the appellant in the mean while on its own risk and subject to the condition that no equity shall be claimed.

4. All the contentions of the respective parties are left open.

5. Writ to go forthwith to the Court below.

(B.H.MARLAPALLE,J.)